

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1037

WILLIAM L. DALEY & another¹

vs.

BOARD OF ASSESSORS OF WEST NEWBURY.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The board of assessors (assessors) of the town of West Newbury (town) appeal from a decision of the Appellate Tax Board (tax board) granting an abatement to William and Mary Ann Daley in the amount of \$26,816.43. For the reasons that follow, we affirm the decision of the tax board.

Background.² The Daleys owned property consisting of two parcels of land located on Main Street in the town. The property was part of a larger parcel that was classified under G. L. c. 61A (agricultural land) for tax purposes for many years. To retain that classification, the Daleys were required to file an application with the town each year. See G. L. c. 61A, § 6. The last application submitted by the Daleys for

¹ Mary Ann Daley.

² The procedural history and facts are taken from the tax board's decision, issued on April 26, 2018.

c. 61A classification was filed in 2011. That application requested classification for fiscal year 2013. On October 4, 2013, the Daleys sent a letter to the assessors stating that they did not wish to reapply for c. 61A classification. In 2017, the Daleys sold the property after the town waived its right of first refusal. Thereafter, on January 9, 2017, the assessors purported to assess a roll-back tax on each parcel in the amounts of \$13,436.06 and \$13,380.37. The Daleys timely filed abatement applications to which they attached a statement of their reasons for requesting the abatements.

The Daleys' abatement applications were denied on May 10, 2017. The letter by which the assessors notified the Daleys that their applications were denied also informed the Daleys that any appeal to the tax board must be filed within three months of the denial of the application. The Daleys filed their appeal on August 4, 2017, within the three-month period.

The Daleys' appeal to the tax board is governed by G. L. c. 61A, § 19.³ At the hearing before the tax board, the assessors argued that the tax board lacked jurisdiction over the

³ Section 19 reads, in pertinent part:

"Any person aggrieved by the refusal of the assessors to modify such a determination or make such an abatement or by their failure to act upon such an application may appeal to the appellate tax board within thirty days after the date of notice of their decision or within three months of the date of the application, whichever date is later."

Daleys' appeal because the abatement applications filed by the Daleys were submitted on a general abatement form for a specific fiscal year. The board rejected this argument on the ground that there is no statutorily required form for a § 19 appeal, and that the detailed statement attached to the abatement form submitted by the Daleys sufficed for the purpose of the § 19 appeal.

Next, the assessors argued that, even though the denial notice sent to the Daleys advised them that they had ninety days to appeal from the order, the statute provides that an appeal pursuant to c. 61A, § 19, must be made within thirty days. Consequently, the assessors argued, the Daleys' appeal was untimely and the tax board lacked subject matter jurisdiction to hear the appeal. As to this issue, the tax board ruled that it would

"not countenance an obvious trap for unwary taxpayers by dismissing this appeal where the appellants [the Daleys] followed the clear language of the abatement denial issued to them. . . . Accordingly, the [b]oard finds and rules that the [Daleys] had [three] months from the denial of their abatement applications to file their appeal and their appeal was timely."

The tax board further ruled that the assessors had failed to properly assess a roll-back tax. The tax board explained:

"Because [c]hapter 61A requires an annual application and it is uncontested that the appellants [the Daleys] did not apply for classification for any year after fiscal year 2013, the assessors improperly valued,

assessed, and taxed the appellants under [c]hapter 61A for fiscal year[s] 2014, 2015, and 2016."

The absence of a request for § 61A classification after 2013 meant that the Daleys were liable for a roll-back tax for the fiscal year 2014, and in the four proceeding tax years.

Moreover, as regards fiscal year 2014, the roll-back taxes "should have been assessed by June 20, 2014, or 90 days after the fiscal year 2014 bills were mailed which ever was later."

See G. L. c. 59, § 75. "Clearly, the January 9, 2017, roll-back tax bills were issued long after the statutory deadline, rendering the subject assessment invalid."

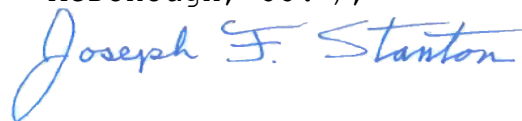
Discussion. Our review of a decision by the tax board is deferential. "We will not modify or reverse a decision of the [tax] board if the decision is based on both substantial evidence and a correct application of the law." Boston Professional Hockey Ass'n, Inc. v. Commissioner of Revenue, 443 Mass. 276, 285 (2005). "Although the proper interpretation of a statute is for a court to determine, we recognize the [tax] board's expertise in the administration of tax statutes and give weight to the [tax] board's interpretations." Adams v. Assessors of Westport, 76 Mass. App. Ct. 180, 183 (2010), quoting Raytheon Co. v. Commissioner of Revenue, 455 Mass. 334, 337 (2009).

In this case, we agree with the reasoning of the tax board in all material respects and discern no basis for disturbing its decision. The assessors' arguments on appeal are the same as those addressed and rejected by the tax board in a well-reasoned decision. There is no claim that the decision is not based on substantial evidence. Furthermore, our review of the applicable law leads us to the same conclusion reached by the tax board.

Accordingly, we affirm the decision of the appellate tax board awarding the full amount of the assessed roll-back taxes, \$26,816.43, to the Daleys.

Decision of Appellate Tax
Board affirmed.

By the Court (Vuono,
Wolohojian &
McDonough, JJ.⁴),



Clerk

Entered: June 27, 2019.

⁴ The panelists are listed in order of seniority.